

**Letter of Findings: 01-20150417
Individual Income Tax
For the Years 2011 through 2014**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The Department denied Individual's protest challenging an assessment of additional individual income tax. The assessment was based upon information available to the Department including information obtained from the county prosecutor alleging that Individual committed acts of theft and securities fraud.

ISSUE

I. Individual Indiana Income Tax - Best Information Available Assessment.

Authority: IC § 6-3-2-1(a); IC § 6-8.1-5-1(b); IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that the Department's assessment of additional Indiana income for the years at issue was arbitrary, unsubstantiated, and untimely.

STATEMENT OF FACTS

Taxpayer is an Indiana individual who previously filed Indiana individual income tax returns. The Indiana Department of Revenue ("Department") issued Taxpayer a May 2015 letter notifying Taxpayer of proposed adjustments to his reported adjusted gross income for the years 2011 through 2014.

According to the letter, the additional assessment was "based upon information in our records and that we obtained from the Office of Marion County Prosecutor." The letter further stated that the adjustment "may cause additional tax, interest and penalty to be due." Subsequently, the Department did in fact issue notices of proposed assessments.

Taxpayer disagreed with the adjustment and proposed assessments and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Individual Indiana Income Tax - Best Information Available Assessment.

DISCUSSION

Taxpayer disagreed with the Department's adjustments on multiple grounds. Taxpayer states that the assessments were unsubstantiated, arbitrary, and untimely.

During the administrative hearing, Taxpayer presented a copy of a "Plea Agreement" entered into between Taxpayer and the Marion County prosecutor. In that agreement, Taxpayer plead guilty to theft and securities fraud. Taxpayer also agreed to pay \$315,000 in restitution to the purported victims of these activities.

As with any assessment of additional tax, Taxpayer bears the burden of establishing that the Department's adjustment was incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v.

Indiana imposes an income tax on "the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a).

The Department issued the proposed assessments under the authority of IC § 6-8.1-5-1(b).

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. (Emphasis added).

Taxpayer has presented no substantive reason why he believes the Department acted outside its authority in issuing the proposed assessments. In fact, Taxpayer agreed that an adjustment to his adjusted gross income for the years was warranted. To that end, Taxpayer agreed to file amended income tax returns and supporting documentation within 30 days of the issuance of this Letter of Findings. Taxpayer agreed that the amended returns would reflect the extent to which he personally benefitted from the criminal actions set out in the plea agreement.

As to his protest, the Department does not agree that proposed assessments were either arbitrary or unwarranted. Nonetheless, subject to the review by the Department's Audit Division, the Department is prepared to accept Taxpayer's amended 2011 through 2014 returns along with the supporting documentation and to make whatever adjustment to the initial assessments is warranted.

FINDING

Taxpayer's substantive protest is denied.

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